

BEFORE THE TENNESSEE STATE BOARD OF EQUALIZATION

IN RE:	Larry Randall Johnson)	
	Map 162-06-0, Parcel 318.00)	Davidson County
	Commercial Property)	
	Tax Year 2007)	

INITIAL DECISION AND ORDER

Statement of the Case

An Appeal has been filed on by the property owner with the State Board of Equalization on November 29, 2007. The subject property is presently valued as follows:

<u>LAND VALUE</u>	<u>IMPROVEMENT VALUE</u>	<u>TOTAL VALUE</u>	<u>ASSESSMENT</u>
\$23,000	\$99,300	\$122,300	\$48,920

This matter was reviewed by the undersigned administrative law judge pursuant to Tennessee Code Annotated (T.C.A.) §§ 67-5-1412, 67-5-1501 and 67-5-1505. A jurisdictional hearing was conducted on January 17, 2008, at the Davidson County Property Assessor's Office. Present at the hearing was Larry Randall Johnson, the taxpayer who represented himself, Mr. Jason Poling, Residential Appraiser, Division of Assessments for the Metro. Property Assessor's Office and Attorney Jenny Hayes from the Metro. Law Department, representing the interest of the County.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The subject property consists of a commercial residential duplex containing approximately 1,920 square feet built in 1977 on a .27 acre tract of land located at 143 Old Tusculum Road in Antioch, Tennessee.

The initial issue in this appeal is whether or not the State Board of Equalization has the jurisdiction to hear the taxpayer's appeal. The law in Tennessee requires a taxpayer to appeal an assessment to the County Board of Equalization prior to appealing the State Board of Equalization. T.C.A. §§ 67-5-1401 & 67-5-1412 (b). A direct appeal to the State Board of Equalization is only permitted if the assessor does not timely notify the taxpayer of a change of assessment prior to the meeting of the County Board. T.C.A. §§ 67-5-508(a)(3) & 67-5-903(c). Nevertheless, the legislature¹ has also provided that:

The taxpayer shall have a right to a hearing and determination **to show reasonable cause** for the taxpayer's failure to file an appeal as provided in this section and, upon demonstrating such reasonable cause, the [state] board shall accept such appeal from the taxpayer up to March 1st of the year subsequent to the year in which the assessment is made (*emphasis added*).

¹ T.C.A. § 67-5-1412 (e)

The Assessment Appeals Commission, in interpreting this section, has also held that:

The deadlines and requirements for appeal are clearly set out in the law, and **owners of property are charged with knowledge of them.** It was not the intent of 'reasonable cause' provisions to waive these requirements except where the failure to meet them is due **to illness or other circumstances beyond the taxpayer's control.** (*Emphasis added*) *Associated Pipeline Contractors Inc.*, Williamson County Tax Year 1992, Assessment Appeals Commission (Aug. 11, 1994). See also *John Orovetz*, Cheatham County, Tax Year 1991, Assessment Appeals Commission (Dec. 3, 1993).

Additionally, the State of Tennessee's Attorney General has also espoused in opinion 92-62, of October 8, 1992, that the deadline for filing appeals to the State Board of Equalization is a jurisdictional prerequisite to seeking such an appeal.

Thus, for the State Board of Equalization to have jurisdiction in this appeal, the taxpayer must show that circumstances beyond his control prevented him from appealing to the Davidson County Board of Equalization. It is the taxpayer's burden to prove that he is entitled to the requested relief.

It is undisputed in this case that the current appellants purchased the property on July 9, 2007. The current taxpayer simply states that he did not receive the notice since he did not acquire the property until after the assessment date. In fact, Mr. Johnson stated that he did not know anything about the taxes until he received the tax bill in October of 2007. When asked whether or not the property taxes were discussed by the closing attorney, as the pro-rated amount had to be paid at closing, he stated that he did not remember.

The question becomes whether it is too late for the current owner to perfect his appeal in order to contest the current assessment. The County Board of Equalization for Davidson County began hearing cases on June 1, 2007 with the last date to schedule appointments for hearings being June 17, 2007. The current taxpayers/appellants are the real parties in interest as it is their property that is the subject of this appeal. Appeal of Vivian & Russ Ragsdale, Davidson County Tax Year 2001, Assessment Appeals Commission, Tennessee State Board of Equalization, August 13, 2003; finding reasonable cause exist in situations where notice was sent to *prior* owners, the assessment change notice did not come to the Ragsdale's' attention at all. The administrative judge determined this did not make any difference since even if no notice had been sent, the taxpayers would have had only until forty-five days from the tax billing date to appeal to the State Board and they did not meet this requirement either. The Commissions rationale in

determining that reasonable cause exist to excuse the late appeal to the State Board hinges on:

... it is apparent that **no effective notice of the new assessment was sent to those most interested in receiving it.** This is not the fault of the assessor, of course, but it is a circumstance we cannot ignore in determining whether the taxpayer has been afforded reasonable opportunity to appeal the new assessment (emphasis added)

The Ragsdale² opinion opened the door for many taxpayers who had purchased their property after the assessment date in reappraisal years or when a Notice of Assessment Change is required to be sent by the county and it is sent to the property owner as of January 1st of that tax year. In this case the taxpayers purchased the property in July of 2007, after the assessment date of January 1, 2007 and after the deadline for scheduling a hearing before the Metropolitan Board of Equalization³. Since 2007 was not a reappraisal year no Notices were sent out and there were not any changes in the valuation or classification of the subject property which would trigger a requirement to send a notice to the property owner. It is this administrative judges opinion that Judge Mark Minsky was correct in his analysis and findings in Gary R. Jones, (Shelby County, Tax Year 2007), when he held:

The administrative judge finds that the present appeal is clearly distinguishable from Ragsdale and similar cases for two reasons. First, since Shelby County was last reappraised in 2005 no assessment change notice was issued for tax year 2007. Second, the taxpayer purchased subject property after the deadline for appeal already passed.

Here as there the appeal must be dismissed for lack of jurisdiction.

ORDER

Based on the circumstances of this case and the previous ruling in Ragsdale by the State Board of Equalization, the administrative judge finds that “reasonable cause” does not exist for the taxpayer’s failure to file before the County Board of Equalization. The value and assessment remain in effect for tax year 2007:

<u>LAND VALUE</u>	<u>IMPROVEMENT VALUE</u>	<u>TOTAL VALUE</u>	<u>ASSESSMENT</u>
\$23,000	\$99,300	\$122,300	\$48,920

Pursuant to the Uniform Administrative Procedures Act, T.C.A. §§ 4-5-301—325, TC.A. § 67-5-1501, and the Rules of Contested Case Procedure of the State Board of Equalization, the parties are advised of the following remedies:

1. A party may appeal this decision and order to the Assessment Appeals Commission pursuant to Tenn. Code Ann. § 67-5-1501 and Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization. T.C.A. § 67-5-1501(c)

² Vivian & Russ Ragsdale (Davidson Co., Tax Year 2001)

³ June 15, 2007

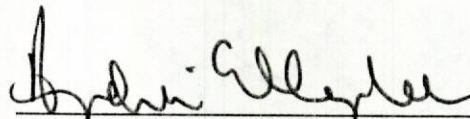
provides that an appeal "must be filed within thirty (30) days from the date the initial decision is sent." Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization provides that the appeal be filed with the Executive Secretary of the State Board and that the appeal "identify the allegedly erroneous finding(s) of fact and/or conclusion(s) of law in the initial order"; or

2. A party may petition for reconsideration of this decision and order pursuant to T.C.A. § 4-5-317 within fifteen (15) days of the entry of the order. The petition for reconsideration must state the specific grounds upon which relief is requested. The filing of a petition for reconsideration is not a prerequisite for seeking administrative or judicial review; or

3. A party may petition for a stay of effectiveness of this decision and order pursuant to T.C.A. § 4-5-316 within seven (7) days of the entry of the order.

This order does not become final until an official certificate is issued by the Assessment Appeals Commission. Official certificates are normally issued seventy-five (75) days after the entry of the initial decision and order if no party has appealed.

Entered on this the 13th day of March, 2008.



ANDREI ELLEN LEE
ADMINISTRATIVE JUDGE
TENNESSEE DEPARTMENT OF STATE
ADMINISTRATIVE PROCEDURES DIVISION

c: Mr. Larry Randall Johnson
Jenny Hayes, Esq.
Jo Ann North, Assessor of Property
Jason Poling, Property Assessor's Office